

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1420 OF 2024

Deepak @ Dinanath Narayan Bhise ...Applicant

vs.

The State of Maharashtra ...Respondent

VISHAL
SUBHASH
PAREKAR

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Date: 2024.04.06
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Mr. Sunny Waskar i/b. Mr. Manish Kanojia, for the Applicant.

Ms. Ranjana Humane, APP for the Respondent/State.

Mr. Bharat Rane, PSI, Kandivali police station.

CORAM : N. J. JAMADAR, J.

DATE : APRIL 05, 2024

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.

2. The applicant who is arraigned in C.R. No. 461 of 1991 registered with Kandivali police station for the offences punishable under sections 143, 144, 145, 147, 148, 149, 323 and 307 read with 34 of Indian Penal Code, 1860 seeks to be enlarged on bail.

3. The applicant and the co-accused were sent for trial in the said crime leading to Session Case No. 1077 of 1992. It seems the applicant and the co-accused remained absent and therefore non bailable warrant and proclamation were issued. One of the accused appeared before the Court of Session. The trial commenced, and after recording of evidence of four witnesses, the co-accused Ramesh Krishnamurthy came to be acquitted by a judgment and order dated 15th December, 2003.

4. The applicant came to be arrested and produced before the Court of Session on 30th December, 2023. The Bail Application preferred by the applicant was rejected by the learned Additional Session Judge by an order dated 24th January, 2024 opining inter alia that the applicant had made himself scarce for almost 20 years and therefore the applicant did not deserve to be enlarged on bail as there was imminent possibility that the applicant would again abscond.

5. Mr. Waskar, the learned counsel for the applicant, submitted that the applicant was under an impression that the prosecution was over. In any event, the co-accused has been acquitted. In that background, there is no justification for detention of the applicant as an under trial prisoner. The applicant will abide by the conditions which may be imposed by the Court to secure the presence of the applicant at the trial.

6. The learned APP resisted the prayer for bail. It was submitted that the applicant had not appeared before the trial Court for almost 20 years and despite diligent efforts, police could not trace him. It was further submitted that in connection with another proceeding, a production warrant has been issued to secure the presence of the applicant. Hence, the application be rejected.

7. I have carefully perused the material on record especially the

deposition of the witnesses and the statement of the co-accused recorded under section 313 of the Code of Criminal Procedure, 1973, who has since been acquitted. It appears that the injured Dharmendra was not examined before the trial Court, in Session Case No. 1077 of 1992.

8. Undoubtedly, the conduct of the applicant and the period for which he had made himself scarce dissuades the Court from readily believing the representation of the applicant that he would regularly appear before the Court. However, the entire setting of the matter is required to be kept in view.

9. It appears that the injured could not be examined by the prosecution in the trial of the co-accused. It could be urged that in the trial of the applicant, the prosecution may be able to examine all the witnesses in support of the charge against the applicant. However, the time lag and the likely non-availability of the witnesses are the factors which deserve to be kept in view.

10. In the circumstances, since one of the co-accused has already been acquitted, further detention of the applicant as an under trial prisoner does not seem warranted. Apprehension on the part of the prosecution can be taken care of by imposing conditions.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant Deepak @ Dinanath Narayan Bhise be released on bail in C.R. No. 461 of 1991 registered with Kandivali police station, on furnishing a P.R. Bond of Rs. 50,000/- with one or two local sureties in the like amount.
- 3] The applicant shall mark his presence at Kandivali police station on the first and third Monday of every month between 11 am to 1 pm, till conclusion of the trial.
- 4] The applicant shall surrender his passport before the trial Court. If the applicant does not hold a passport, the applicant shall file affidavit to that effect.
- 5] The applicant shall not leave the country without prior permission of the trial Court.
- 6] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.
- 7] The applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.
- 8] The applicant shall regularly attend the proceedings before

the jurisdictional Court and shall not seek any adjournment.

9] By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N. J. JAMADAR, J.)